

### Remarks

Applicants have studied the Office Action of August 3, 2004 and, as a result, have amended the specification and Claims 1, 5, 6, 11 and 15, added Claims 21 and 22, and canceled Claims 2-4 and 12-14, as set forth above. As so amended or left unchanged, pending Claims 1, 5-11 and 15-22 of the application are believed to set forth patentable subject matter and reconsideration is respectfully requested in light of the following comments.

In response to the Examiner's objection to the drawings, applicants have attached hereto four corrected drawing sheets (informal) for the Examiner's consideration. Within these attached corrected drawings, some of the lines and reference numerals of the various figures have been re-outlined and "white-out" has been used to cover many of the speckled (copying) marks. In any event, the element numbers and figures of the attached drawings are believed to be of better quality and much cleaner than are the originally-submitted drawings, and the incorrect reference numeral "54" which previously appeared in Fig. 4 has been changed to the correct reference numeral "52". In addition, the reference numeral 70 has been added to Fig. 4 to denote the slit in the foam body 34 illustrated therein. As so presented, the attached drawings are believed to be satisfactory for examination purposes and are not believed to be objectionable for those purposes. However and in accordance with their original plan, applicants will undertake the expense of obtaining Draftsman-prepared formal drawings for submission in this case upon receipt of a Notice of Allowance.

In response to the Examiner's objection to the specification for numerous typographical errors, applicants maintain that most of the typographical errors called to applicant's attention are not present in the originally-filed application. (The same can be said about the Examiners' later-stated objections to Claims 4 and 16.) More specifically, the errors listed from "On page-7" through "On page-15" on page 3 of the Examiner's Remarks cannot be substantiated by the application copy contained in the file of the undersigned. In support of this contention, applicants attach hereto a copy of pages 7-13 and 15 taken from the file of the undersigned for the Examiner's review and which illustrate that the typographical errors called to applicants' attention do not appear in the printed text. One cannot help but wonder if the copy of the application being reviewed by the Examiner is a scanned copy of the originally-filed application which was transcribed imperfectly by the scanning computer. In any event, it is hoped that a trend is not beginning in which applicants are routinely requested to correct mistakes for which they are not responsible.

Meanwhile, the Examiner's suggested changes to pages 1, 5, 8, 9, 10 and 14 (beginning near the bottom of page 3 and continuing onto page 4 of the Examiner's Remarks) have been noted, and the appropriate paragraphs of the specification have been amended, as set forth above.

With regard to the Examiner's objection to Claim 6 for use of the term "includes", rather than the term "including", Claim

6 has been amended, as set forth above, to rectify this matter.

With regard to the Examiner's rejection of the independent Claims 1 and 11 in view patents issued to Feldman, applicants respectfully contend that as amended above, each of these claims is patentably distinguishable from the Feldman disclosure. In this connection, a significant feature of applicants' invention relates to the inclusion of means associated with the container bottom for supporting the retainer member within the container bottom and the cooperation between the retainer member (which is positionable about the stem of the plant desired to be transplanted) and the associated means. More specifically, the retainer member is in the form of a foam body having an outer periphery and which has a slit therein for accepting the stem of the plant desired to be transplanted, and the associated means is adapted to surround the outer periphery of the foam body when the foam body is positioned within the interior of the container so that the outer periphery of the foam body is confined within a prescribed area and thereby prevented from expanding outwardly. Therefore, upon inserting the stem of the plant desired to be transplanted into the slit of the foam body so that the foam body is positioned about the stem of the plant and then positioning the foam body, with the plant stem accepted thereby, into the interior of the container adjacent the bottom thereof while the slit is held in a closed condition about the plant stem, the outer periphery of the foam body is prevented from expanding outwardly by the associated means so that the slit is prevented from spreading apart

from its closed condition about the plant stem.

Because the associated means surrounds the outer periphery of the foam body and thereby confines the foam body to a prescribed area, the foam body is prevented from spreading apart at the stem-accepting slit in a manner which could otherwise permit dirt or potting soil which is positioned within the interior of the container from falling out of the container through the slit and then through the center hole of the recess. Such an advantage can be readily appreciated in view of the fact that as a plant grows within the container, the plant stem (which is accepted by the slit) will commonly increase in diameter and consequently urge the foam body to spread apart at the slit. However, because the associated means (e.g. the sidewalls of the circular recess section 60 of applicants' embodiment 20 illustrated in Figs. 3 and 4) confines the foam body to a prescribed area so that its diameter cannot increase as its slit tends to enlarge as a consequence of plant growth, the associated means maintains the slit in a closed condition about the plant stem and helps to maintain dirt, potting soil or other material contained within the container from falling out of the container through the slit.

Applicants have amended each of independent Claims 1 and 11, as set forth above, to more clearly emphasize the aforesaid feature, i.e. the cooperation between the foam body of the retainer member and the means associated with the container bottom for surrounding the outer periphery of the foam body so that the stem-accepting slit is maintained in a closed condition about

the plant stem. More specifically, each of Claims 1 and 11 has been amended to now recite that the retainer member is in the form of a foam body having an outer periphery and which is positionable within the interior of the container so that when positioned within about the stem of the plant and positioned within the interior of the container, the retainer member is prevented from falling out of the hole defined within the container bottom. Furthermore, the foam body has slit therein which extends from about the center of the foam body to the outer periphery thereof for accepting the stem of the plant desired to be transplanted by spreading the foam body apart at the slit and inserting the plant stem sideways into the slit, and the container includes means associated with the container bottom for surrounding the outer periphery of the foam body so that upon inserting the stem of the plant desired to be transplanted into the slit of the foam body so that the foam body is positioned about the stem of the plant and then positioning the foam body, with the plant stem accepted thereby, into the interior of the container adjacent the bottom thereof while the slit is in a closed condition about the plant stem, the outer periphery of the foam body is prevented from expanding outwardly by the associated means and the slit is prevented from spreading apart from its closed condition about the plant stem.

Since much of the language which has been incorporated within independent Claims 1 and 11 was taken from Claims 2-4 and 12-14, Claims 2-4 and 12-14 have been canceled. Dependent Claims 5 and 15 have been amended, as set forth above, so that they now

depend from independent Claims 1 and 11 (rather than from now-canceled claims 4 and 14).

A review of the Feldman patent yields absolutely no teaching or suggestion of any means for confining the outer periphery of a foam retainer member in a manner which prevents the diameter of the retainer member from increasing in size as a stem-accepting slit of the retainer member increases in size or which maintains the stem-accepting slit in a closed condition about the plant stem. The Feldman patent does describe upper and lower retention devices 30 and 40, respectively, having slits 31 and 41 for accepting the stem of a plant, but the Feldman planter possesses nothing which confines the circular periphery of (either of) the devices 30, 40 within a prescribed area or prevents the devices from spreading apart at the slits. Indeed, it is believed that Feldman appreciated the possibility that the slits 31 and 41 could spread apart (and thus permit dirt or soil from falling therethrough) by his suggestion in col. 3, lines 66 through col. 4, line 6 that the upper retention device 30 be placed over the lower retention device 40 so that slit 31 overlies a solid area of the lower retention device 30. In other words and as implied by Feldman, the upper and lower retention devices 30, 40 should be placed in overlying relationship so that the slits 31, 41 are not vertically aligned with one another; otherwise, any spreading apart of the slits 31 or 41 would permit dirt or potting soil to fall through the aligned slits 31 and 41 and out of the bottom of the Feldman planter.

In contrast and since the associated means provided adjacent the bottom of applicants' container surrounds and thereby confines the outer periphery of the foam body of the retainer member within a prescribed area so that the stem-accepting slit of the retainer is maintained in a closed condition about the plant stem, the foam body is prevented from spreading apart or expanding in a manner that would permit the stem-accepting slit to enlarge (as, for example, the stem of the plant enlarges) and thereby permit dirt or potting soil to fall out of the container through the slit.

With no teaching, hint or suggestion contained within the Feldman reference of any confinement of - or any means for confining - the outer periphery of a foam-bodied retainer member (which is positionable about the stem of a plant to be transplanted) within a prescribed area so that the stem-accepting slit provided therein is prevented from expanding in a manner which would permit the stem-accepting slit to enlarge (as, for example, the stem of the plant enlarges), or any advantage provided by such a confinement of the outer periphery of the foam-bodied retainer member, it is believed that the Feldman disclosure cannot fairly bar the patentability of applicants' invention as set forth in independent Claims 1 and 11, as amended above.

With regard to the Examiner's rejection of Claims 5-10 and 15-20 as unpatentable in view of the Feldman reference or a combination of Feldman and Green, applicants respectfully disagree. For example, each of Claims 8 and 18 recite that the divider means

(for separating the container interior into upper and lower compartments) includes a body of foam material. A review of the Feldman disclosure (relied upon by the Examiner in his rejection of Claims 8 and 18) reveals - and as admitted by the Examiner - that the divider plate 50 described therein is not suggested as being constructed of foam material as set forth in Claims 8 and 18 nor is there any suggestion that the divider plate 50 could advantageously be constructed out of foam material.

With no teaching, hint or suggestion contained within Feldman that the divider means is (or could be) constructed of a foam material, it is believed that the Feldman reference cannot fairly bar the patentability of Claim 8 or Claim 18. Furthermore and due to the absence of a one-for-one correspondence between a Feldman-suggested description of the material of the divider plate 50 (of which there appears to be none) and the expressly-stated foam material of the divider means set forth in Claims 8 and 18, Feldman clearly presents no §102 bar to the patentability of Claim 8 or Claim 18. Along the same lines, applicants respectfully disagree with the Examiner's broad conclusion that because Feldman suggests that the container 10 can be primarily produced from an injection mold, this also suggests that the divider plate 50 is constructed of foam material.

Furthermore and with respect to Claims 9 and 19, each of these claims recites that the divider means includes multiple bodies of porous material for dividing the interior of the container into a lower compartment and a multiple of upper



compartments. As described in applicants's specification (see, e.g. pages 14, line 8 and following), the multiplicity of upper compartments accommodates the placement of a different growth medium within each compartment (e.g. a dry soil-less mix in a first layer, and a moistened soil-less mix in a second layer). A review of the Feldman reference yields no teaching, hint or suggestion of the provision of more than one divider plate or that such multiple plates can be used for separating different growth mediums from one another. Accordingly, Claims 9 and 19 are believed to be patentably distinguishable from the Feldman reference in this respect.

In any event, each of Claims 5-10 and 15-20 depends, either directly or indirectly, upon independent Claim 1 or 11, and by virtue of the additional language set forth therein, should be allowed with its parent claims.

Applicants have added Claims 21 and 22 to secure rights in the invention to which they believe themselves to be entitled. In particular, Claims 21 and Claim 22 depend from Claim 1 and Claim 11, respectively, and recite that the outer periphery of the foam body is cylindrical in shape, and the associated means includes a circular recess section having sidewalls for nestingly accepting the foam body when the foam body is positioned within the interior of the container so that when the foam body is positioned about the stem of the plant desired to be transplanted and then the foam body, with the plant stem accepted thereby, is positioned within the circular recess section, the foam body spans the entire width

of the circular recess section so that the outer periphery of the foam body is prevented from expanding outwardly by the sidewalls of the circular recess section. Since nowhere in the Feldman reference is there any teaching or suggestion of a circular recess section for nestingly accepting either of the retention devices 30 or 40 so that the circular periphery of the devices 30 or 40 is prevented from expanding outwardly, added Claims 21 and 22 are believed to be patentably distinct from the disclosure of Feldman.

Since the total number of currently-pending claims (taking into account the addition of Claims 21 and 22 and the cancellation of Claims 2-4 and Claims 12-14) do not exceed twenty in number, no fee for the addition of Claims 21 and 22 is necessary.

In view of the foregoing, it is believed that this application is now in condition for allowance and such action at an early date is earnestly solicited.

Respectively submitted,

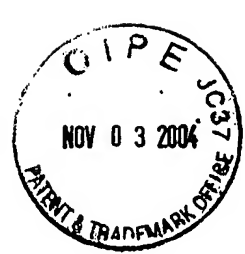


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I hereby certify that this paper is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date.

November 1, 2004      Michael E. McKee  
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22 is in the form of an open-topped receptacle, or bag 48, including cylindrical sidewalls 50 and a bottom 52 having a center hole 54 (Fig. 7) opening therethrough. Preferably, at least the sidewalls 50 of the bag 48 are flexible in nature to permit the bag 48 (and thus the planter 20) to be collapsed to a relatively flat condition upon the bottom 52 for shipping, packaging or storage of the planter 20. In addition, a plurality of small drain holes 42 (Fig. 7) are disposed within the bottom 52 of the bag 48 to accommodate drainage and help prevent possible root rot.

The material out of which the bag 48 is constructed is preferably a flexible material, such as plastic or fabric, but other materials can be used. For purposes of supporting the container 22 in a suspended condition, there are provided a plurality of (e.g. three) reinforced openings 58 which are regularly spaced about the top of the bag 48. As will be apparent herein, these openings 58 cooperate with the hanger system 37 for supporting the (remainder of the) planter 20 from an elevated support structure.

The bottom member 32 (best shown in Figs. 3-5) is plate-like in form and is constructed of relatively rigid material, such as stiff plastic, and has a circular recess section 60 formed centrally therein, and the bottom of the recess section 60 includes a center hole 64 so that an inwardly-directed flange 66 encircles the center hole 64. The bottom member 32 is sized to be positionable within the bottom of the

bag 48 while the circular recess section 60 is sized to be accepted by the center hole 54 (Fig. 7) formed in the bottom 52 of the bag 48. Therefore and when the bottom member 32 is positioned within the bottom of the bag 48, the recess section 5 60 protrudes downwardly through the center hole 54 of the container bottom 52. As will be apparent herein, the center hole 64 of the recess section 60 provides the opening through which the stem 46 of the plant 23 extends as the root system 44 is supported within the interior 24 of the container 22. If 10 desired, the bottom member 32 can be reinforced with a plurality of ribs (Fig. 4) extending between the recess section 60 and the periphery of the bottom member 32.

With reference again to Fig. 3, each divider 26 of the divider means 25 is platen-like in shape, porous in nature, and 15 has a diameter which is slightly smaller than that of the bag 48 so that each divider 26 can be positioned within the container 22 to separate the interior thereof into a lower compartment and at least one upper compartment. In the depicted planter 20, each divider 26 is comprised of an open-cell foam material and 20 is provided with a plurality of small drainage holes 56 (Fig. 1) which extend between the upper and lower surfaces of the divider 26.

As mentioned earlier, an upper compartment of the bag 46 provides a cavity within which a soil-less mix can be 25 contained and into which water and/or fertilizer can be poured while the lower compartment is intended to contain dirt or

potting soil placed therein, as well as the root system of the plant 23 to be grown within the planter 20. Because of the porous nature of the divider 26, water and/or fertilizer positioned above the lower compartment is permitted to seep  
5 downwardly through the divider 26 where is dispersed through the dirt or potting soil for absorption by the plant 23 through its root system 44. The material out of which each divider 26 is constructed is preferably soft porous foam material, such as a porous polyurethane foam, but other materials can be employed.

10               With reference to Figs. 3, 4, 6 and 7, the retainer member 33 of the depicted planter 20 is in the form of a foam body 34 which is substantially cylindrical in form and which is sized to be accepted by the circular recess of the recess section 60 and rest upon the inwardly-directed flange 66 when  
15 placed downwardly into the recess section 60, as illustrated in Fig. 4. In addition, the foam body 34 includes a slit 70 which extends from about the center of the body 34 to the outer periphery thereof. By manually spreading the foam body 34 apart at the slit 70 (as illustrated in Fig. 4), the slit 70 is in  
20 condition to accept the stem 46 of a plant 23 inserted sideways therein and so that by inserting the plant stem 46 sideways therein and subsequently releasing the foam body 34, the inherent resiliency of the foam body 34 closes the slit 70 about the plant stem 46. With the slit 70 closed about the plant stem  
25 46 in this manner, and the foam body 34 positioned within the recess section 60 of the bottom member 32 (as illustrated in

Fig. 7), dirt, potting soil or other material used for plant growth and which is positioned adjacent the root system 44 within the container interior 24 is prevented from falling out of the container 24 through the center hole 64 of the recess section 60. It follows that the foam body 34 acts as a retainer member which cooperates with the bottom member 32 for holding the plant 23 (Figs. 1 and 2) in an upside-down condition within the bottom of the planter 20.

With reference again to Figs. 1 and 8, the hanger system 37 is attachable to the bag 48 by way of the reinforced openings 58 for suspension of the bag 48 from an elevated support (not shown). In particular, the hanger system 37 includes a plurality of (i.e. three) cable members 84 which are joined together at one end thereof (i.e. the upper end as seen in Figs. 1 and 8) by way of a closed ring 86 which is adapted to be looped about the hook 41 (Fig. 1) or similar fastener anchored within an overhead structure for suspension of the container 22 therefrom. The hanger system 37 further includes a set of pins 88 which are each joined to the end of a corresponding cable member 84 opposite the ring end thereof. To attach the pins 88 to the container openings 58, each pin 88 is manually oriented alongside its corresponding cable member 84 and then inserted one-end-first through a reinforced opening 58 from the inside of the bag 48. By releasing the pin 88 after its has completely passed through the opening 58, the pin 88 cannot be pulled through the opening 88 by pulling upon the



opposite end of the cable member 84.

With reference to Figs. 8 and 9, the upper ring member 38 of the top assembly 36 provides a decorative rim for the planter 20 and is positionable atop the bag 48 for supporting the funnel insert piece 40 of the top assembly 36. The ring member 38 is adapted to rest upon the upper edge of the bag 48 as the planter 20 is suspended from an elevated support. If desired, male and female components of snap-type fasteners 90 (Figs. 8 and 9) can be secured along the upper edge of the bag 48 and the inside surface of the upper ring member 38, respectively, to prevent the upper ring member 38 and bag 48 to be connected to one another in a snap-fit relationship. Such a connection between the upper ring member 38 and bag 48 helps to prevent inadvertent separation between the bag 48 and the upper ring member 38.

In the depicted planter 20, the cable members 84 of the hanger system 37 are intended to pass through preformed holes 96 (Figs. 1 and 8) provided in the ring member 38 to help secure the ring member 38 in place atop the bag 48 during use of the planter 20. In this connection, each pin 88 of the cable system 37 is initially routed through a corresponding preformed hole 96 before being routed through a corresponding reinforced opening 58 of the bag 48 for attachment thereto.

With reference to Figs. 1 and 9, the funnel insert piece 40, introduced above, of the top assembly 36 serves as a cover for the container 22 and includes a central funnel-shaped

section 94 for funneling water and fertilizer poured therein downwardly to a central opening 98. Furthermore, the funnel insert piece 40 includes an outer edge 100 (best shown in Fig. 9) which can be accepted by the interior of the ring member 38 for support of the funnel insert piece 40 atop the ring member 38. In use, the insert piece 40 can be easily and readily removed from the ring member 38 to expose the mouth of the container 22.

Of the several components of the aforescribed planter 20, each of the funnel insert piece 40, upper ring member 38, and bottom member 32 are preferably constructed (e.g. molded) out of a hard plastic.

Exemplary dimensions of the planter 20 and its components are as follows: The upper ring member 38 is about ten inches in diameter and the central opening, or mouth, of the upper ring member 38 is about 8.5 inches. Each divider 26 is about 9 inches in diameter and about 0.25 inches thick. The funnel insert piece 40 is about nine inches in diameter, and the central opening 98 thereof is about two inches in diameter. The bottom member 32 is about nine inches in diameter, the central opening 64 of the circular recess section 60 is about 2.5 inches in diameter, and the foam body 34 has a diameter of about 3.5 inches and a thickness of about one inch. The bag 48 is slightly larger than nine inches in diameter, it is about seventeen inches high, and its (bottom) center hole 54 is about 3.625 inches in diameter. Each of the cable members 84 of the





hanger assembly 37 is about twenty-one inches long.

Assuming the planter 20 is fully assembled (with the dividers 26 and foam body 34 positioned within the container interior 24), the planter 20 can be used in the following manner

5 to transplant a plant 23 therein. First, the planter 20 should be suspended from an overhead support structure by way of the hanger system 37 so that the planter 20 is suspended at a convenient height for working within the container interior 24. Next, the funnel insert piece 40 is removed from the upper ring

10 member 38, and then the dividers 26 and foam body 34 are removed from the container interior 24 through the upper ring member 38. The plant 23 is then inserted root-end-first up through the center hole of the 64 of the recess section 60 of the bottom member 32 until the root system 44 is disposed within the

15 container interior 24 and above the bottom member 32. At that point and as illustrated in Fig. 6, the foam body 34 is held in a manner which spreads the body apart at the slit 70 and its slit 70 is directed over the stem 46 of the plant 23 until the stem 46 is positioned within the slit 70. The foam body 34 is

20 then released so that its slit 70 traps the plant stem 46 within the body 34, and then the plant 23 and foam body 34 is lowered toward the bottom member 32 to position the foam body 34 within the recess section 60 and so that the stem 46 depends downwardly from the planter container 22. It will be understood that when

25 positioned within the recess section 60, the foam body 34 rests upon the inwardly-directed flange 66 thereof.

48 with the wet soil-less mix, leaving about a two-inch air gap at the very top of the bag 48. The funnel insert piece 40 is then replaced upon the upper ring member 38, and the planter 20 can be re-hung (if desired) to place or height more desirable than the place or height at which a plant 23 was transplanted into the planter 20.

It will be understood that numerous modifications and substitutions can be had to the aforescribed embodiment without departing from the spirit of the invention. For example, although the aforescribed foam body 34 has been illustrated and described as being insertable downwardly into the recess section 60 of the bottom member 32 through the bag 46, a comparable (foam) retainer member can be slightly compressed by hand and then inserted upwardly into the recess section 60 from the underside thereof. Upon release of the (foam) retainer member, the retainer member expands to substantially fill the recess section 60 and rest upon the inwardly-directed flange 66 thereof. Accordingly, the aforescribed embodiment is intended for the purpose of illustration and not as limitation.